

1 JOHN D. MUNDING
2 MUNDING, P.S.
3 309 E Farwell Rd., Ste 310
4 Spokane, WA 99218-1152
5 (509) 590-3849
6 john@mundinglaw.com

Chapter 7 Trustee

7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF WASHINGTON
9

10 In re:

11 MASINGALE, MONTE L. &
12 ROSANA D.,

13 Debtor(s).
14
15
16
17
18

Case No. 15-03276-FPC7

Chapter 7

**CHAPTER 7 TRUSTEE'S REPLY TO
DEBTORS' OBJECTION TO MOTION
FOR ORDER DIRECTING THE
CANCELLATION OF MORTGAGE
RECORDED IN VIOLATION OF
AUTOMATIC STAY AND
EXTINGUISHING LIEN AGAINST
REAL PROPERTY SALE PROCEEDS**

19
20 The Chapter 7 Trustee, John D. Munding, of Munding, P.S. (the "Trustee"), on
21 behalf of the Chapter 7 Bankruptcy Estate of Monte L. & Rosana D. Masingale,
22 ("Bankruptcy Estate") submits the following reply to the *Debtors' Objection to Chapter*
23 *7 Trustee's Motion For Order Directing Cancellation of Mortgage Recorded in*
24 *Violation of the Automatic Stay and Extinguishing Lien* ("Debtors' Objection") (ECF
25
26

REPLY
- 1

MUNDING, P.S.
309 E FARWELL RD., STE 310
SPOKANE, WA 99218-1152
(509) 590-3849

1 No. 562).

2 **A. The Trustee's Motion Is Not Moot and Entry of An Order Granting the**
3 **Trustee's Motion is Necessary.**
4

5 In opposition to the Trustee's Motion for Order Directing Cancellation of
6 Mortgage Recorded in Violation of the Automatic Stay and Extinguishing Lien
7 ("Trustee's Motion"), the Debtors' argue that the Trustee's Motion should be denied as
8 moot. The Debtors' base their argument of mootness upon an alleged Release of
9 Mortgage recorded April 21, 2022, by Southwell & O'Rourke, P.S. However, the
10 Release of Mortgage has not been filed in this proceeding and it is unclear from the
11 record before the Court if the lien(s) created by the Mortgage were released against the
12 "Subject Property" and now the post-closing sale proceeds held by the Trustee.
13

14 The Debtors, through counsel, take the position that:
15

16
17 3. Upon this Court ordering the sale of the Subject Property, including the
18 Debtor's Homestead interest to which the lien attached, the lien should have
19 automatically removed.

20 Debtors' Objection, page 2.
21

22 According to the foregoing statement, the Mortgage was somehow tied to the
23 Debtors' Homestead interest. In the Declaration of Counsel In Support of Motion for
24 Order Directing Trustee To Hold Home Sales Proceeds Pending Appeal and Further
25 Order of Court (ECF No. 557), counsel for the Debtors testifies:
26

1 4.... One of the issues relates to whether Debtor's home and the proceeds from
2 the Chapter 7 Trustee's sale thereof are exempt property in whole or in part.

3 4. Debtor Rosana Masingale and her undersigned counsel believe the
4 proceeds from the sale are exempt and should remain intact until Appeal is
5 concluded....

6 Declaration of Counsel (ECF No. 557)

7 The Order Denying Debtor's Motion for Order Directing Abandonment of
8 Property and Granting Trustee's Motion to Sell Property ("Order") (ECF No. 536)
9 ordered in part:
10

11 4. The Trustee is authorized to pay from closing proceeds all allowed liens (other
12 than the alleged judgment lien of the CRU), encumbrances, costs, fees, property
13 taxes, and the debtors' maximum allowed homestead claims of exemption of
\$45,950;

14 5. The judgment lien of the CRU, if any, will attach to the net closing proceeds
15 held by the Trustee; and..

16 *Order, page 8.*

17
18 The Trustee has complied with the terms and conditions of the Order, including
19 the disbursement of the Debtors' maximum allowed homestead of \$45,950. The entry
20 of an order, in similar form to that attached hereto as Appendix "A", is necessary to
21 complete the record in this proceeding and confirming the only lien which remains
22 attached to the net closing proceeds is that of the CRU.
23
24
25
26

1 DATED this 4th day of May, 2022.

2 MUNDING, P.S.

3 /s/ John D. Munding.

4 John D. Munding, WSBA # 21734

5 Attorney for Chapter 7 Trustee

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
REPLY
- 4

MUNDING, P.S.
309 E FARWELL RD., STE 310
SPOKANE, WA 99218-1152
(509) 590-3849

APPENDIX “A”

1
2
3
4
5
6
7
8
9 **UNITED STATES BANKRUPTCY COURT**
10 **EASTERN DISTRICT OF WASHINGTON**

11 In re:

Case No. 15-03276-FPC7

12
13 **MASINGALE, MONTE L. &**
14 **ROSANA D.,**

Chapter 7

15 Debtor(s).

16 **ORDER GRANTING CHAPTER 7**
17 **TRUSTEE'S MOTION FOR ORDER**
18 **DIRECTING THE CANCELLATION**
19 **OF MORTGAGE RECORDED IN**
20 **VIOLATION OF AUTOMATIC STAY**
21 **AND EXTINGUISHING LIEN**
22 **AGAINST REAL PROPERTY SALE**
23 **PROCEEDS**

24 This matter having come before the court upon the Chapter 7 Trustee's
25 ("Trustee") *Motion for Order Directing the Cancellation of Mortgage Recorded in*
26 *Violation of Automatic Stay and Extinguishing Lien Against Real Property Sale*
Proceeds (ECF No. 551), and the Court having considered the debtors' Objection to

1 Chapter 7 Trustee's Motion for Order Directing Cancellation of Mortgage Recorded in
2 Violation of the Automatic Stay and Extinguishing Lien Against Real Property Sale
3 Proceeds (ECF No. 562), and the Court having held a hearing on May 17, 2022, and
4 having considered the pleadings of record and counsel's argument, and good cause
5 appearing:
6

7 IT IS HEREBY ORDERED:
8

9 1. The Chapter 7 Trustee's Motion for Order Directing Cancellation of Mortgage
10 Recorded in Violation of the Automatic Stay and Extinguishing Lien Against Real
11 Property Proceeds (ECF No. 551) is GRANTED.
12

13 2. All liens and encumbrances created by the Mortgage dated August 31, 2021
14 executed by the debtor Rosana D. Masingale in favor of Southwell & O'Rourke, P.S.
15 previously recorded against the real property commonly known as 19716 E. 8th Avenue,
16 Greenacres, WA 99216 and the subsequent sale proceeds derived from the sale of such
17 real property as held by the Chapter 7 Trustee are cancelled and extinguished.
18

19
20 /// END OF ORDER ///

21 Presented by:

22 MUNDING, P.S.
23

24 /s/ John D. Munding

25 JOHN D. MUNDING WSBA #21734

26 Attorney for Trustee